

DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, Judge

CACR06-74

RANDOLPH FULMER
APPELLANT

August 30, 2006
AN APPEAL FROM PULASKI
COUNTY CIRCUIT COURT
[CR04-4397]

V.

HON. WILLARD PROCTOR, JR., JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

At a bench trial in Pulaski County Circuit Court, Randolph Fulmer was found guilty of residential burglary, first-degree domestic battery, and second-degree battery and was sentenced to a total of ten years in the Arkansas Department of Correction. He challenges the sufficiency of the evidence to support the burglary and first-degree domestic-battery convictions. We affirm.

According to the testimony of David Bowie, he and Theresa Wickliffe had been drinking on the evening of July 28, 2004, and the two returned to Wickliffe's residence around 11:00 p.m. Later that evening, appellant entered Wickliffe's home by breaking the window panes in the front door. Appellant then began beating Wickliffe with a baseball bat, hitting her on the arm, the side of her head, in the ribs, and on her head. After Bowie put on his pants, appellant attacked him, connecting with a glancing blow on the side of the head and on his arm. By the end of the attack, Wickliffe had bruises on her neck, arm, and thigh and suffered a broken arm. Bowie had bruising on his left arm.

Bowie testified that he was not living with Wickliffe at the time of the incident. He was unsure whether appellant was living with Wickliffe, but he thought that appellant and Wickliffe were living together. Bowie testified, “They were kind of on again, off again, and I think it was off again right about that time.” He also discussed an incident that happened earlier that morning. According to Bowie’s testimony, he went to Wickliffe’s residence and saw appellant’s van in her yard. Bowie took Wickliffe to pick up her daughter and then returned to the residence. Wickliffe then wanted something out of appellant’s van and knocked out a window. She later went inside her house, obtained a bat, and “took out every window, every light, every amber light, every brake light, headlight, anything that had glass in it.”

The trial court later found appellant guilty of residential burglary, first-degree domestic battery, and second-degree battery. Appellant was sentenced to a total of ten years in the Arkansas Department of Correction.

Appellant argues that the trial court erred in denying his motion for directed verdict on the residential-burglary and the domestic-battery charges. A directed-verdict motion is a challenge to the sufficiency of the evidence. *Doubleday v. State*, 84 Ark. App. 194, 138 S.W.3d 112 (2003). We review the evidence in the light most favorable to the State. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* Only evidence supporting the verdict will be considered. *Id.* Circumstantial evidence provides the basis to support a conviction if it is consistent with the defendant’s guilt and inconsistent with any other reasonable conclusion. *Holt v. State*, 85 Ark. App. 308, 151 S.W.3d 1 (2004). Whether the evidence does so is a question for the jury. *Id.*

Regarding the directed-verdict motion on the residential-burglary charge, appellant contends that the State presented insufficient proof that he unlawfully entered Wickliffe's home. A person commits residential burglary if he enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing in the residential occupiable structure any offense punishable by imprisonment. Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2006). "Enter or remain unlawfully" means to enter or remain in or upon premises when not licensed or privileged to enter or remain in or upon the premises. Ark. Code Ann. § 5-39-101(2)(A) (Repl. 2006).

In support of his argument, appellant heavily relies on the evidence that Bowie thought appellant lived with Wickliffe and argues that he lawfully entered his own residence. However, our standard of review precludes us from considering this evidence, as it does not support the verdict. *See Baughman v. State, supra*. The trial court had before it testimony that appellant broke into Wickliffe's home by shattering a window, and, while Bowie's testimony established an "off-again-on-again" relationship between appellant and Wickliffe, Bowie opined that the two were "off" at the time of the incident. This is circumstantial evidence that appellant unlawfully entered Wickliffe's home, as a reasonable fact finder could conclude that a person would not enter a residence that he was authorized to enter by shattering window panes in the front door.¹

Appellant also notes that he was charged with first-degree domestic battery for causing serious physical injury to *a family or household member* and contends that this

¹The State relies on *Parham v. State*, 79 Md. App. 152, 556 A.2d 280 (1989), for the proposition that appellant's method of entry into Wickliffe's home demonstrates a lack of any possessory or occupancy interest. While we agree with the State's contention, *Parham* is not directly on point. There, the appellant challenged the sufficiency of the evidence to support a burglary conviction, arguing that he had a possessory interest in the marital home and, therefore, was breaking into his own residence. The court in that case held that a marital relationship did not preclude a conviction for burglary. In its analysis, the court did not discuss the manner in which the appellant entered the residence.

charge is inconsistent with the State's theory that he unlawfully entered Wickliffe's home; however, the definition of "family or household member" includes persons who have in the past resided together and persons who are presently or in the past have been in a dating relationship. *See* Ark. Code Ann. § 5-26-302(2)(F), (H). Under those circumstances, the residential status of the defendant or the victim at the time of the crime is irrelevant.

After viewing the evidence, we hold that the State presented sufficient evidence that appellant unlawfully entered Wickliffe's residence. Accordingly, we affirm appellant's residential-burglary conviction.

Regarding his motion for directed verdict on the first-degree domestic-battery charge, appellant contends that the State presented insufficient evidence that he caused serious physical injury to Wickliffe and that, at best, the evidence shows that she suffered only physical injury. A person commits first-degree domestic battery if, with the purpose of causing serious physical injury to a family or household member, the person causes serious physical injury to a family or household member by means of a deadly weapon. Ark. Code Ann. § 5-26-303(a)(1) (Repl. 2006). Serious physical injury is defined as "physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ." Ark. Code Ann. § 5-1-102(21) (Repl. 2006). This can be contrasted with the definition of physical injury, which is the "[i]mpairment of physical condition"; "infliction of substantial pain"; or "infliction of bruising, swelling, or a visible mark associated with physical trauma." Ark. Code Ann. § 5-1-102(14) (Repl. 2006). Expert medical testimony is not required to prove serious physical injury, as the finder of fact may use its common knowledge to determine whether such injury occurred. *Johnson v. State*, 26 Ark. App. 286, 764 S.W.2d 621 (1989).

In arguing that Wickliffe's injuries did not arise to the level of serious physical injury,

he compares her injuries to those inflicted in three other cases: *Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000), where the victim spent three days in intensive care, had a long-term loss of taste, smell, and memory, and had to undergo facial plastic surgery; *Bangs v. State*, 338 Ark. 515, 998 S.W.2d 738 (1999), where the victim suffered bruises on her forehead and face, two lacerations on her scalp that required staples, and numerous blunt-object injuries to her neck and the back of her head; and *Enoch v. State*, 37 Ark. App. 103, 826 S.W.3d 291 (1992), where the victim suffered facial fractures and impairment of vision for about two weeks, a broken leg, fractured toe, and bruised heel and pelvis.

The State presented evidence that Wickliffe suffered a broken arm, and even the cases relied upon by appellant show that broken bones constitute serious physical injury under the Arkansas Code. *See also Tarentino v. State*, 302 Ark. 55, 786 S.W.2d 584 (1990) (holding that the evidence supported the finding of serious physical injury where the victim suffered a fractured skull as a result of a beating with a baseball bat, requiring 13 ½ days' hospitalization). Even without evidence of the length of time Wickliffe spent in the hospital because of her broken arm, a reasonable trier of fact could find that a broken bone constitutes serious physical injury. We affirm appellant's conviction for first-degree domestic battery on similar reasoning.

Affirmed.

ROBBINS and CRABTREE, JJ., agree.